

STATE OF MICHIGAN  
COURT OF APPEALS

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DELORES RANKIN-CROSBY,

Plaintiff-Appellee,

v

DEPARTMENT OF CORRECTIONS,

Defendant-Appellant.

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UNPUBLISHED

May 27, 2014

No. 313191

Muskegon Circuit Court

LC No. 11-047844-CZ

Before: GLEICHER, P.J., and HOEKSTRA and O'CONNELL, JJ.

GLEICHER, P.J. (*concurring*).

I concur with the result reached by the majority. I write separately to respectfully express my view that in holding that the trial court correctly denied defendant's motion for judgment notwithstanding the verdict (JNOV), the majority has incorrectly relied on the analytical framework established in *McDonnell Douglas Corp v Green*, 411 US 792, 802-805; 93 S Ct 1817; 36 L Ed 2d 668 (1973). The burden-shifting approach of *McDonnell Douglas* does not apply when a plaintiff presents direct evidence of unlawful discrimination. See *Debano-Griffin v Lake Co*, 493 Mich 167, 176; 828 NW2d 634 (2012). "[D]irect evidence of retaliation establishes without resort to an inference that an employer's decision to take an adverse employment action was at least in part retaliatory." *Cuddington v United Health Servs, Inc*, 298 Mich App 264, 276; 826 NW2d 519 (2012).

Here, plaintiff presented direct evidence that defendant terminated her employment precisely because plaintiff made a charge of discrimination. Indeed, the parties stipulated in the jury's presence that plaintiff "had clean performance evaluations and that [defendant] terminated her based only on the sending of the August 23, 2010, e-mail to Ronda VanHurley-Wilson." "Rarely will an employer openly admit having fired a worker in retaliation for exercising a right of employment." *Cuddington*, 298 Mich App at 276. However, this is a rare case of an admitted retaliatory motive. Accordingly, the trial court properly denied defendant's motion for JNOV.

/s/ Elizabeth L. Gleicher